

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DEANGELO LAMONT MITCHELL,

Petitioner,

vs.

DWIGHT NEVEN,

Respondents.

3: 10-CV-0349-LRH-VPC

ORDER

This is a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in which petitioner, a state prisoner, is proceeding *pro se* and *in forma pauperis*. On July 6, 2010, petitioner filed a motion in which he states that this is a successive petition. (Docket #7.) He asks this court to transfer the case to the Ninth Circuit, so that it can indicate whether petitioner will be allowed to pursue the action.

Under AEDPA's gatekeeping" provisions, an applicant seeking to file a second or successive petition must obtain from the appropriate court of appeals an order authorizing the district court to consider the application. 28 U.S.C. § 2244(b)(3)(A). Section 2244(b)(2) provides that a claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless--

(A) the applicant shows that the claim relies on a new rule of constitutional law made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B)(I) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

1 (ii) the facts underling the claim, if proven and viewed in the light of the
2 evidence as a whole, would be sufficient to establish by clear and
3 convincing evidence that, but for constitutional error, no reasonable
fact finder would have found the applicant guilty of the underlying
offense.

4 28 U.S.C. § 2244(b)(2)(A)-(B). The statute also provides that, “[b]efore a second or successive
5 application permitted by this section is filed in the district court, the applicant shall move in the
6 appropriate court of appeals for an order authorizing the district court to consider the application.”

7 28 U.S.C. § 2244(b)(3)(A).

8 **IT IS THEREFORE ORDERED** that petitioner’s request that this court transfer his
9 petition to the Ninth Circuit is **DENIED**. If petitioner wishes to pursue an habeas corpus remedy,
10 he must first file a motion in the Ninth Circuit requesting an order authorizing this court to consider
11 a second or successive petition.

12 **IT IS FURTHER ORDERED** that this petition for writ of habeas corpus is **DISMISSED**
13 without prejudice as an unauthorized second or successive petition. The Clerk of the Court is
14 directed to enter judgment accordingly and to close this case.

15 DATED this 14th day of July, 2010.

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LARRY R. HICKS
19 UNITED STATES DISTRICT JUDGE
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